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## PURPOSE

To protect Federal Information Databases (FID), such as the Federal Tax Information (FTI), and resources entrusted to the Michigan Department of Health and Human Services (MDHHS), in compliance with the Internal Revenue Service (IRS) Publication 1075, and Michigan Public Act 427 of 2018. IRS publication 1075 and Michigan Public Act 427 of 2018 require that MDHHS create a written policy that ensures compliance with IRS standards for persons having access to FTI and/or FID that includes FTI.

MDHHS supports workplace productivity, safety, and security by ensuring that applicant's backgrounds are suitable for the position in which they are being considered.

This policy applies to current employees, applicants for employment, contractors and sub-contractors working for MDHHS that have positions with access to federal information databases and federal tax information and provides guidelines and procedures for conducting background investigations, and suitability standards for MDHHS applicants, existing employees, contractors and sub-contractors who may have access to FTI and/or FID that includes FTI as part of their job duties with MDHHS.

If a background investigation finds any activity on criminal history, including a plea of nolo contendere, or if an applicant for employment, existing employee, contractor or sub-contractor has a felony conviction with a nexus to the job for which they hold or are applying with access to FTI and/or FID that includes FTI, such activity will be referred to human resources (HR) for final determination. Existing employees may have their access to FTI and/or FID, that includes FTI, removed or be disciplined up to termination. New hires, contractors or sub-contractors may be removed from further consideration if they do not pass the pre-employment screening.

### **New Employees/Contractors**

MDHHS conducts a background investigation on all candidates, contractors, and sub-contractors who may have access to FTI and/or FID that includes FTI as part of their job duties using Internet Criminal History Access Tool (ICHAT) and fingerprinting (if applicable). The background investigation also includes fingerprinting, as required by IRS, based on the position and risk designation noted in the position description associated with the position. Upon request of the hiring manager and/or senior

leadership, the Office of Human Resources may conduct an additional review of background investigation results. MDHHS conducts reinvestigations within 10 years of the previous background investigation by enrolling employees in Next Generation Identification (NGI) Rap Back Service for the duration of their employment in a position with access to FTI and/or FID that includes FTI.

### **Existing Employees/Contactors**

MDHHS conducts an FBI fingerprinting background check, as required by the IRS, based on the position and risk designation associated with the position. MDHHS conducts reinvestigations within 10 years of the previous background investigation by enrolling employees in Next Generation Identification (NGI) Rap Back Service for the duration of their employment in a position with access to FTI and/or FID that includes FTI.

## **DEFINITIONS**

### **Background Investigation**

All necessary investigations required to have access to FID and FTI. IRS Pub 1075 requires that investigations must include, at a minimum, fingerprint checks (as permitted by the FBI), local law enforcement investigations, and citizenship verification.

### **Citizenship Requirement Investigation**

A subject's eligibility to legally work in the United States. Utilizes Form I-9.

### **Federal Information Database (FID)**

A database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information.

### **Federal Tax Information (FTI)**

Consists of tax returns and tax return information. FTI can be either or both. FTI is any return or return information received from the IRS or an IRS secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, Bureau of Fiscal Services, or the Center of Medicare and Medicaid Services (CMS). FTI is also shared under agreements allowed by statute or regulations.

## **Fingerprinting**

Fingerprint background checks, as permitted by the FBI.

## **Local Law Enforcement Investigation**

Investigations at local law enforcement agencies where the subject has lived, worked, and/or attended school within the past five years. These may include searches of the Michigan State Police Law Enforcement Information Network (LEIN) and the National Crime Information Center (NCIC), as permitted by the FBI.

## **Suitability Standards**

An individual's identifiable character traits and conduct sufficient to determine whether employment or continued employment would or would not protect the integrity and efficiency of MDHHS services should the individual gain access to FTI and/or FID that includes FTI. Suitability is distinguishable from a person's ability to fulfill the qualifications of a job, as measured by experience, education, knowledge, and skills.

## **PROCEDURE**

All existing and potential employees, contractors and sub-contractors must complete a MSP RI-030, LiveScan Fingerprint Background Check Request. The individual must provide their name, any aliases, previous last names, or name at birth, home address, city, state, personal identification number (driver license or State ID number,) and Social Security number. The individual must sign the form to certify that the information is true and authorize HR to conduct the criminal history check. OHR will conduct an initial ICHAT background search of local records for all candidates.

The preferred candidate, contractor, or subcontractor for a position with access to FTI and/or FID that includes FTI on MDHHS's behalf must pick up a MSP RI-030, LiveScan Fingerprint Background Check Request, from human resources once the conditional offer is made and accepted. If the candidate cannot pick up the form in person, he/she should immediately contact HR staff to discuss alternative arrangements.

An offer of employment may be rescinded unless a criminal history checks which include fingerprinting, is conducted prior to being hired in any position with access to FTI and/or FID that includes FTI on MDHHS's behalf. Candidates must schedule their screening within 24 hours of receipt of the form.

Existing employees, contractors, sub-contractors, and other State employees acting on MDHHS's behalf in positions identified as having access to FTI and/or FID that includes FTI, must submit to a fingerprint-based background check. Failure to provide a fingerprint-based background check may result in having their access to FID and FTI removed or discipline up to and including termination.

Human resource makes the final determination for any activity on criminal history. Current employees may have their access to FTI and/or FID that includes FTI removed or disciplined, including, but not limited to, termination, if they do not pass the background check. Similarly, new hires, contractors, or sub-contractors may be removed from further consideration, if they do not pass the pre-employment screening.

MDHHS verifies (using E-Verify) that all new employees, with access to FTI and/or FID that includes FTI, are legally present in the United States. MDHHS may verify this information directly or may require contractors and sub-contractors to verify the information and maintain record of certification for audit purposes.

### Timeframe

MDHHS human resources must conduct all background investigations within 5-business days, when practicable.

### Suitability Standards

In determining an individual's suitability to access FTI and/or FID that includes FTI, MDHHS considers felonies for the following crimes and activities:

1. Theft.
2. Misappropriation.
3. Larceny.
4. Burglary.
5. Robbery.
6. Fraud.
7. Identity theft.

8. Illegal credit card use.
9. Any crime involving fraud, deceit, or dishonesty with a potential for financial gain to the individual or for the benefit of another.
10. Any crime with a direct link to the individual's specific job functions.

If it is determined that an individual has been convicted for a felony in the crimes and activities listed above and upon evaluation of the background check results, the individual will not have access to FTI and/or FID that includes FTI.

### **Employee Reporting Requirements**

It is the employee's duty to notify his/her supervisor and MDHHS Human Resource Office immediately of any felony.

### **Evaluation of Background Check Results**

The hiring manager, and the MDHHS human resources director, or his/her designee, will evaluate the results of the background investigations described in this policy, together with any additional information supplied by the applicant or any court or agency with information about the applicant's criminal history.

In determining the applicant's suitability for access to FTI and/or FID that includes FTI, the evaluators shall consider all of the following factors:

- The policies of Michigan.
- The specific job duties and responsibilities necessarily related to the access of FTI and/or FID that includes FTI by the applicant.
- The bearing, if any, the criminal offense or offenses for which the applicant was previously convicted will have on his/her fitness and trustworthiness to access and safeguard confidential information, including FTI and/or FID that includes FTI, and the potential risk of misuse of such information.

- The time which has elapsed since the occurrence of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- Any information produced by the applicant, or produced on his/her behalf, respecting their rehabilitation and good conduct.
- The legitimate interest of MDHHS in safeguarding confidential information, including FTI and/or FID that includes FTI.
- Material or intentional false statement, deception or fraud in examination or appointment.
- Any statute or regulatory bar which prevents the lawful employment of the person involved in the position in question.

If the evaluators determine that an unreasonable risk of misuse of confidential information exists, they will notify current employees, contractors, sub-contractors, and prospective employee in writing that, based on the results of their background investigative findings, the individual was determined not to be suitable for appointment to the position they sought.

#### **Records of Background Check Investigations**

1. Information obtained through background investigation is confidential and will only be reviewed by evaluators. Hiring manager and/or senior leadership will only be provided with the employee's cleared/not cleared letter.
2. The process for obtaining or conducting background investigations required or authorized by this policy is in accordance with all applicable EEOC rules and guidance documents. The cleared/not cleared letters related to accessing FTI and/or FID that includes FTI shall be maintained in an employee's official personnel file and, for contract workers, in a manner specified by the MDHHS human resources director or his/her designee. The results of the background investigations must be maintained in a separate, confidential file/record.
3. The performance of background investigations for contract workers shall be in conformity with any applicable terms of the

agreement between the contract worker or contract agency and MDHHS.

4. The cost of any background check conducted for MDHHS applicants, existing employees, contractors and sub-contractors pursuant to this policy is paid by MDHHS.

## REFERENCES

### [IRS Publication 1075, September 2016 Revision](https://www.irs.gov/pub/irs-pdf/p1075.pdf)

(<https://www.irs.gov/pub/irs-pdf/p1075.pdf>) is a publication issued by the IRS that gives detail requirements for governmental agencies and their employees that have access to FTI. This publication provides guidance to ensure the policies, practices, controls, and safeguards employed by recipient agencies, agents, or contractors adequately protect the confidentiality of FTI.

### [Code of Federal Regulations 5 CFR 731.201](https://www.ecfr.gov/cgi-bin/text-idx?SID=f21e06c55cf1cae964743a56274bbcb1&mc=true&node=pt5.2.731&rgn=div5)

(<https://www.ecfr.gov/cgi-bin/text-idx?SID=f21e06c55cf1cae964743a56274bbcb1&mc=true&node=pt5.2.731&rgn=div5>) is a federal regulation utilized by the IRS for determining *suitability standards* for applicants, appointees, and employees. Many of the *suitability standards* used by the MDHHS are adapted from this regulation.

### [Inside MDHHS/Human Resources/Employee Handbook/MDHHS Work Rules](https://stateofmichigan.sharepoint.com/teams/insidedhhs/lifeandcareer/Documents/Employee/WorkRules.pdf?cid=aed37143-66de-4c7b-8058-5018bf3538ad)

(<https://stateofmichigan.sharepoint.com/teams/insidedhhs/lifeandcareer/Documents/Employee/WorkRules.pdf?cid=aed37143-66de-4c7b-8058-5018bf3538ad>) set standards of behavior that the Michigan Department of Health and Human Services expects of all employees. Violation of work rules may lead to counseling or disciplinary action, which may range from reprimands through discharge.

### Licensing Rules for Child Placing Agencies

([https://www.michigan.gov/documents/DHS-OCAL-1602\\_Master\\_CPA\\_chklist\\_120957\\_7.pdf](https://www.michigan.gov/documents/DHS-OCAL-1602_Master_CPA_chklist_120957_7.pdf)) [Child Care Organization Licensing Act](#) provides for the protection of children through the licensing and regulation of child care organizations and for the establishment of standards for child care in the form of administrative rules.

### Michigan Public Health Code

(<https://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-368-of->

[1978.pdf](#)) An Act to protect and promote the public health of Michigan's citizenry.

Long Term Care Workforce Background Rules

(<https://www.maryfreebed.com/wp-content/uploads/2015/01/Background-Check.pdf>) authorize a state and federal fingerprint-based criminal history record check for employees, independent contractors, and individuals granted clinical privileges who have direct access to patients or residents and are under the facility's control.

Good Moral Character

([https://www.michigan.gov/documents/mdhhs/CWL-PUB-673\\_498802\\_7.pdf](https://www.michigan.gov/documents/mdhhs/CWL-PUB-673_498802_7.pdf)) administrative rules that govern assessment of the good moral character of applicants for licensure or registration of a child care organization or adult foster care facility.

## CONTACT

For more information contact MDHHS Human Resources.